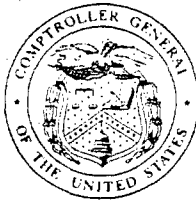


DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195465

DATE: September 17, 1979

[Request For]
MATTER OF: Brutus J. Brown - Retroactive Promotion and Backpay

DIGEST: Employee of the Charleston Naval Shipyard, who claimed a retroactive promotion and backpay for period before his position was reclassified, is not entitled to payment. General rule is that even though position is reclassified to a higher grade, the employee is not entitled to additional compensation until he is promoted to the higher grade. See cited decisions.

ISSUE DECIDED

An employee whose position is reclassified to a higher grade is not entitled to a retroactive promotion and backpay for the time he was performing the same duties before the reclassification. The general rule is that even though a position is reclassified to a higher grade, the employee's entitlement to the higher salary does not commence until he is actually promoted to the reclassified position.

FACTS

Mr. Brutus J. Brown, an employee of the Charleston Naval Shipyard, on September 17, 1977, requested that his position of Laborer Foreman, WS-35-002-03, be reclassified as he was performing duties and supervising personnel at a higher level than was provided for in his job description. The position was reclassified and Mr. Brown was promoted to the position of Equipment Cleaner Foreman, WS-70-009-04, effective July 2, 1978. On August 21, 1978, Mr. Brown requested a retroactive temporary promotion and backpay from December 16, 1975, until the date of his promotion, July 2, 1978. His claim was administratively denied on January 17, 1979, as no officially established and classified higher grade position existed during the time of Mr. Brown's claim. On January 18, 1979, Mr. Brown forwarded his claim to our Claims Division. The claim was disallowed by Certificate

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of Settlement No. Z-2811297, April 26, 1979, which was appealed. In his appeal Mr. Brown states that he was not promoted until he appealed his title and grade and that his subordinates were promoted earlier.

DECISION

It is well established that employees of the Federal Government are entitled only to the salaries of the positions to which they are appointed regardless of the duties they actually perform. Thus, even if a position to which an employee is appointed is subsequently reclassified to a higher grade, entitlement to the pay of the higher grade does not commence until the employee is actually promoted to the higher grade. See Matter of George W. Noller, B-192560, December 14, 1978; 52 Comp. Gen. 631 (1973); and court decisions cited therein.

Furthermore, neither the Back Pay Act, 5 U.S.C. § 5596 (1976), nor the Classification Act, 5 U.S.C. §§ 5101-5115 (1976), authorize a retroactive promotion with backpay for the period of an alleged improper classification. United States v. Testan, 424 U.S. 392 (1976). Also, retroactive promotions may not be awarded solely on the basis of administrative delays in the processing of personnel actions. Matter of Clem H. Gifford, B-193834, June 13, 1979.

With regard to Mr. Brown's claim that he is entitled to a retroactive promotion on the basis of a "detail" under the rationale of our decisions Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975) and Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), we have recognized that in certain circumstances an employee may be entitled to a retroactive promotion if he is officially detailed to an existing, classified, higher grade position for an extended period. In the present case, the record indicates that no established, classified WS-4 position existed during the time of Mr. Brown's claim. Therefore, he is not entitled to a retroactive promotion on the basis of Matter of Turner-Caldwell, supra, or Matter of Reconsideration of Turner-Caldwell, supra.

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Accordingly, the settlement of our Claims Division is sustained.

W. K. Hill
Deputy Comptroller General
of the United States